

REMARKS/ARGUMENTS

Favorable reconsideration of this application in light of the present amendment and the following discussion is respectfully requested.

Claims 1, 3, 5, and 7-11 are presently pending in this case. Claims 1, 3, 5, and 7 are amended and new Claims 9-11 are added by the present amendment. As amended Claims 1, 3, 5, and 7 and new Claims 9-11 are supported by the original disclosure,<sup>1</sup> no new matter is added.

In the outstanding Official Action, Claims 1, 3, 5, and 7 were rejected under 35 U.S.C. §103(a) as unpatentable over Itoh et al. (U.S. Patent Application Publication No. 20060205358, hereinafter "Itoh") in view of Alastalo (U.S. Patent No. 6,721,302) and Takano (U.S. Patent Application Publication No. 20030148780); and Claim 8 was rejected under 35 U.S.C. §103(a) as unpatentable over Itoh in view of Alastalo and Takano and further in view of Hashem et al. (U.S. Patent No. 7,603,127, hereinafter "Hashem").

With regard to the rejection of Claims 1, 3, 5, and 7 as unpatentable over Itoh in view of Alastalo and Takano, that rejection is respectfully traversed.

Amended Claim 1 recites in part:

establishing a list of available modulation schemes,  
***each modulation scheme being associated with a channel quality and an available transmission block size;***  
detecting a channel quality between the base station and the mobile station;  
detecting the amount of data buffered in a transmission buffer of a sender;  
***determining a temporary modulation scheme and a temporary transmission block size from the list based on the channel quality; and***  
***if the buffered data amount is greater than or equal to the temporary transmission block size, selecting the temporary modulation scheme as the actual modulation scheme to be used in the packet communications, and if the buffered data amount is less than the temporary transmission block size, selecting a modulation scheme from the list***

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<sup>1</sup>See, e.g., the specification at page 8, line 32 page 9, line 26 and Figures 3 and 5.

***corresponding to a smallest available transmission block size that is greater than or equal to the amount of data buffered and with a minimum difference from the buffered data amount.***

Amended independent Claims 3, 5, and 7 recite similar subject matter, albeit in different statutory forms.

The outstanding Office Action asserted that Figure 10 and paragraph 5 of Takano describes establishing a list of available modulation schemes, each modulation scheme having an available transmission block size. However, this list in Takano is a general list used in conventional techniques, and it does not include one-to-one association between modulation scheme **and** a channel quality. Accordingly, Takano cannot describe “establishing a list” as defined in amended Claim 1, or the corresponding features of Claims 3, 5, and 7.

The outstanding Office Action further asserted that Figure 3 and paragraph 125 of Itoh discloses a determination unit configured to determine a modulation scheme for the packet communications based on the channel quality and the buffered data amount in the transmission buffer. However, the cited part of Itoh only describes selection of a modulation scheme according to the channel quality, and it does **not** describe the selection of a modulation scheme based upon a buffered data amount in a transmission buffer, as recited in amended Claim 1. Accordingly, Itoh cannot describe “selecting” as defined in amended Claim 1, or the corresponding features of Claims 3, 5, and 7.

Finally, it is respectfully submitted that none of Itoh, Takano, and Alastalo disclose selecting a temporary modulation scheme and temporary transmission block size based on the channel quality, and then selecting an appropriate modulation scheme and transmission block size based upon the buffered data amount, as recited in amended Claim 1. Accordingly, the proposed combination cannot describe “determining a temporary modulation scheme and a temporary transmission block size” and “selecting” as defined in amended Claim 1, or the

corresponding features of Claims 3, 5, and 7. Consequently, Claims 1, 3, 5, and 7 (and all claims dependent therefrom) are patentable over Itoh in view of Alastalo and Takano.

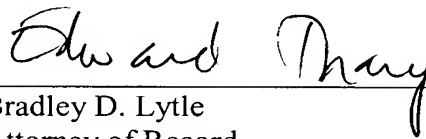
With regard to the rejection of Claim 8 as unpatentable over Itoh in view of Alastalo and Takano and further in view of Hashem, it is noted that Claim 8 is dependent from Claim 1, and thus is believed to be patentable for at least the reasons discussed above. Further, it is respectfully submitted that Hashem does not cure any of the above-noted deficiencies of Itoh, Alastalo, and Takano. Accordingly, it is respectfully submitted that Claim 8 is patentable over Itoh in view of Alastalo and Takano and further in view of Hashem.

Finally, new Claims 9-11 are supported at least by original Claims 2, 4, and 6. As new Claims 9-11 are dependent from Claims 1, 3, and 5, new Claims 9-11 are patentable for at least the reasons described above.

Accordingly, the pending claims are believed to be in condition for formal allowance. An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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